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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 19 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH -TAX

Versus

BRINDA BENEFICIARY TRUST

Appearance:

1. WEALTH TAX REFERENCE No. 19 of 1990

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 21/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question of law is referred for our opinion in respect of assessment year 1979-80:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the question of applicability of higher rate u/s.21(4) would arise only in case if the assessee is taxable?"

2. We have heard Mr BB Naik, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of this Court in Commissioner of Wealth-tax vs. Rekha and Dhanesh Trust, 231 ITR 805 wherein this Court was concerned with the same controversy. After considering the scheme of the Wealth Tax Act, 1957 and particularly Section 3 read with Schedule I and Section 21 of the Act, this Court held that the wealth tax which was not payable by the individual was also not payable by the representative assessee and it was only when the wealth tax was payable by an individual when the net wealth exceeded the exemption limit that the question of recovering tax at a higher rate prescribed by clause (b) of sub-section (4) of Section 21 from such representative assessee would arise. This Court clearly held that while the exemption limit was available as much to the representative assessee as to the other individuals and that it was only when the exemption limit was crossed that the representative assessee would be liable to pay wealth tax at a higher rate.

3. Applying the ratio laid down by this Court in the aforesaid decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-